



Published on *United States Bankruptcy Court* (<http://www.canb.uscourts.gov>)

[Home](#) > Memorandum of Decision Re: Employment of Financial Advisor

Tuesday, May 22, 2001

UNITED STATES BANKRUPTCY COURT

NORTHERN DISTRICT OF CALIFORNIA

DO NOT PUBLISH This case disposition has no value as precedent and is not intended for publication. Any publication, either in print or electronically, is contrary to the intent and wishes of the court.

In re

PromoVu, Inc.,

No. 01-10935

[Debtor](#) (s).

## **Memorandum**

Most courts which have addressed the issue have concluded that the term "professional" in § 327(a) of the [Bankruptcy Code](#) includes financial advisors and workout consultants. In re Bartley Lindsay Co., 137 B.R. 305, 308 (D.Minn.1991); In re United Color Press, Inc., 129 B.R. 143, 145 (Bankr.S.D.Ohio 1991); In re Neidig Corp., 117 B.R. 625 (Bankr.D.Colo.1990); Matter of Federated Department Stores, Inc., 114 B.R. 501 (Bankr.S.D. Ohio 1990); In re Dola International Corp., 88 B.R. 950 (Bankr.D.Minn.1988); In re American Int'l Airways, Inc., 69 B.R. 396 (Bankr.E.D.Pa.1987); In re Carolina Sales, 45 B.R. 750 (Bankr.E.D.N.C.1985); In re WFDR, Inc., 22 B.R. 266 (Bankr.N.D.Ga. 1982). As such, they may not be employed if they do not qualify as disinterested. In re Palm Coast, Matanza Shores Limited Partnership, 101 F.3d 253, 257 (2<sup>nd</sup> Cir. 1996). Section 105(a) of the Code authorizes the bankruptcy court to

"issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." Despite the broad grant of equitable powers, bankruptcy courts cannot use them "to defeat clear statutory language, nor to reach results inconsistent with the statutory scheme established by the Code." In re Powerine Oil Co., 59 F.3d 969, 973 (9th Cir.1995). The proposed consultant in this case, PR Group, LLC, has a prepetition [claim](#)<sup>i</sup>. Section 101(14) of the Code defines "disinterested person" as a person that is not a [creditor](#)<sup>i</sup>, equity holder or insider. PR Group therefore cannot be approved as a consultant for the debtor. The court may not use § 105(a) to reach a different result. The court assumes that if PR Group cannot be employed it is no longer interested in loaning the debtor money. In any event, the court will not approve any loan agreement which calls for the conversion of debt to equity outside the confines of a confirmed [plan](#)<sup>i</sup>. For the foregoing reasons, the debtor's motions to borrow funds from the PR Group and employ it as a consultant will be denied. Counsel for objecting creditor Hirsch & Cie shall submit an appropriate form of order.

Dated: May 22, 2001

---

Alan Jaroslovsky

U.S. [Bankruptcy Judge](#)<sup>i</sup>

---

**Source URL (modified on 11/04/2014 - 11:11am):**

<http://www.canb.uscourts.gov/judge/jaroslovsky/decision/memorandum-decision-re-employment-financial-advisor>